

SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY

ARTHUR DECARLO, JR., Personal  
Representative on behalf of the Estate of his  
father, ARTHUR DECARLO, SR. in his  
individual capacity, and on behalf of his  
father's heirs and next of kin,

Plaintiff,

v.

NATIONAL FOOTBALL LEAGUE,

Defendant.

Index No. 161644/2015

**Hon. Manuel J. Mendez**

**ANSWER**

Defendant the National Football League (the "NFL"), by and through its undersigned attorneys Paul, Weiss, Rifkind, Wharton & Garrison LLP, submits the following Answer in response to the Complaint:

1. The NFL denies the allegations in Paragraph 1, except admits that Plaintiff purports to bring a wrongful death/survival action, and admits that Arthur "Art" DeCarlo, Sr. ("DeCarlo") played professional football from 1953 to 1960.

2. The NFL denies the allegations in Paragraph 2.

3. The NFL denies the allegations in Paragraph 3, except admits that the member clubs of the NFL have adopted various Constitutions and By-Laws pursuant to which the NFL has organized and regulated the operations of NFL football, including before the negotiation of any collective bargaining agreement.

4. The allegations in Paragraph 4 state legal conclusions to which no response is required. To the extent a response is required, the NFL denies the allegations in Paragraph 4.

5. The allegations in Paragraph 5 state legal conclusions to which no response is required. To the extent a response is required, the NFL denies knowledge or information sufficient to form a belief as to truth of the allegations in Paragraph 5, except admits that DeCarlo ultimately suffered death.

6. The allegations in Paragraph 6 state legal conclusions to which no response is required. To the extent a response is required, the NFL admits that it is an unincorporated association of thirty-two member clubs and is organized under the laws of the State of New York.

7. The allegations in Paragraph 7 state legal conclusions to which no response is required. To the extent a response is required, the NFL denies knowledge or information sufficient to form a belief as to the truth of the allegations concerning the survivors of DeCarlo purportedly entitled to recover damages in this action.

8. The NFL admits the allegations in Paragraph 8.

9. The NFL admits the allegations in Paragraph 9, and avers that DeCarlo, as a retired player, was the beneficiary of collective bargaining between representatives of the NFL and the NFL Players' Association ("NFLPA").

10. The NFL denies the allegations in Paragraph 10.

11. The allegations in Paragraph 11 state legal conclusions to which no response is required. To the extent a response is required, the NFL denies the allegations in Paragraph 11, except admits that venue is proper in this County, and admits that the NFL's headquarters have been located in New York, New York from 1960 through the present.

12. The NFL denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 12.

13. The NFL admits the allegations in Paragraph 13.

14. The NFL denies that DeCarlo played professional football in the NFL in 1961, and admits that he played football in the NFL between 1953 and 1960.

15. The NFL denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 15.

16. The NFL admits that the NFL is an unincorporated association of thirty-two member clubs organized under the laws of the State of New York and located at 345 Park Avenue, New York, New York.

17. The NFL denies the allegations in Paragraph 17. The NFL avers that it maintained a headquarters in Pennsylvania only between 1946 and 1959.

18. The NFL admits that the member clubs of the NFL first adopted a Constitution and By-Laws prior to the negotiation of a Collective Bargaining Agreement (“CBA”) with the NFLPA, and respectfully refers the Court to the NFL Constitution and By-Laws for a complete statement of their contents.

19. The allegations in Paragraph 19 state legal conclusions to which no response is required. To the extent a response is required, the NFL denies the allegations in Paragraph 19, except admits that DeCarlo was employed by the Washington Redskins, the Pittsburgh Steelers, and the Baltimore Colts, each of which: is separately owned and operated; shares revenue from broadcasting, merchandising, and licensing; and currently holds interests in NFL Ventures, L.P. and NFL Properties LLC.

20. The NFL denies the allegations in Paragraph 20.

21. The NFL denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 21, and respectfully refers the Court to Dr. Martland's 1928 article in the *Journal of the American Medical Association* for a complete statement of its contents.

22. The NFL denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 22, and respectfully refers the Court to the NCAA Medical Handbook for Schools and Colleges for a complete statement of its contents.

23. The NFL denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 23, and respectfully refers the Court to the NCAA Medical Handbook for Schools and Colleges for a complete statement of its contents.

24. The NFL denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 24, and respectfully refers the Court to the 1937 American Football Coaches Association report for a complete statement of its contents.

25. The NFL denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 25, and respectfully refers the Court to the New York State Athletic Commission rules for a complete statement of their contents.

26. The NFL denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 26, and respectfully refers the Court

to Busse and Silverman's 1952 article in the *Journal of the American Medical Association* for a complete statement of its contents.

27. The NFL denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 27, and respectfully refers the Court to the 1952 article in the *New England Journal of Medicine* for a complete statement of its contents.

28. The NFL denies the allegations in Paragraph 28, and avers that research into the potential connection between concussive and sub-concussive blows to the head and long-term neurocognitive impairment is ongoing and the NFL has both supported and funded that research and made rule changes that seek to reduce player injuries, including head injuries.

29. The NFL admits the allegations in Paragraph 29.

30. The NFL denies the allegations in Paragraph 30.

31. The allegations in Paragraph 31 state legal conclusions to which no response is required. To the extent a response is required, the NFL denies the allegations in Paragraph 31.

32. The NFL denies the allegations in Paragraph 32, except admits that it organized and regulated the game of professional football in the NFL during DeCarlo's NFL playing career.

33. The NFL denies the allegations in Paragraph 33, except admits that it regulated certain issues arising between its member clubs and players.

34. The NFL denies the allegations in Paragraph 34, except admits that it has been responsible for supervising compliance with certain policies, rules, and regulations affecting NFL players and member clubs.

35. The NFL denies the allegations in Paragraph 35.

36. The allegations in Paragraph 36 state legal conclusions to which no response is required. To the extent a response is required, the NFL denies the allegations in Paragraph 36.

37. The NFL denies the allegations in Paragraph 37.

38. The allegations in Paragraph 38 state legal conclusions to which no response is required. To the extent a response is required, the NFL denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 38, and denies the allegation that it has voluntarily assumed a role as the unilateral guardian of player safety.

39. The NFL denies the allegations in Paragraph 39.

40. The allegations in Paragraph 40 state legal conclusions to which no response is required. To the extent a response is required, the NFL denies the allegations in Paragraph 40.

41. The NFL denies the allegations in Paragraph 41.

42. The NFL denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 42.

43. The NFL denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 43 regarding the NFL's alleged "ongoing superior knowledge to the players" of the purported health risks associated with

playing football. The NFL denies the remaining allegations in Paragraph 43, except admits that it has consulted medical experts regarding health risks associated with playing football, including the health risks associated with concussive and sub-concussive injuries.

44. The allegations in Paragraph 44 state legal conclusions to which no response is required. To the extent a response is required, the NFL denies the allegations in Paragraph 44.

45. The allegations in Paragraph 45 state legal conclusions to which no response is required. To the extent a response is required, the NFL denies the allegations in Paragraph 45.

46. The NFL denies the allegations in Paragraph 46.

47. The NFL denies the allegations in Paragraph 47, except admits that certain individuals associated with the NFL, and many other experts in the field, stated and continue to state that further study of Chronic Traumatic Encephalopathy (“CTE”) is necessary before it can be said that a causal link between football and CTE exists.

48. The NFL denies the allegations in Paragraph 48.

49. The allegations in Paragraph 49 state legal conclusions to which no response is required. To the extent a response is required, the NFL denies the allegations in Paragraph 49, except admits that it has been involved in the study of the performance of certain safety equipment.

50. The NFL denies the allegations in Paragraph 50, except admits that Al Toon was a Pro Bowl receiver for the New York Jets who suffered from severe

headaches, malaise, intolerance of loud noises, depression, and emotional lability, and who retired in 1992 in part due to postconcussion syndrome.

51. The NFL denies the allegations in Paragraph 51, except admits that Paul Tagliabue was NFL Commissioner from 1989 through 2006, and that Paul Tagliabue practiced antitrust law with Covington & Burling before becoming NFL Commissioner.

52. The NFL denies the allegations in Paragraph 52, except admits that the Mild Traumatic Brain Injury Committee (the “MTBI Committee”) published papers on concussions and other topics in leading peer-reviewed journal *Neurology*.

53. The NFL denies the allegations in Paragraph 53, except admits that the MTBI Committee was created in 1994, and that NFL Charities provided funding for certain research grants.

54. The NFL denies the allegations in Paragraph 54, except admits that the MTBI Committee was an independent entity funded by NFL Charities, a 501(c)(3) organization that is legally separate from the NFL.

55. The NFL denies the allegations in Paragraph 55, except admits that NFL Charities funded grants to sponsor good-faith concussion and head-trauma research.

56. The NFL denies the allegations in Paragraph 56.

57. The NFL denies the allegations in Paragraph 57.

58. The allegations in Paragraph 58 state legal conclusions to which no response is required. To the extent a response is required, the NFL denies the allegations in Paragraph 58.

59. The allegations in Paragraph 59 state legal conclusions to which no response is required. To the extent a response is required, the NFL denies the allegations in Paragraph 59.

60. The NFL admits that Wayne State University received grant money from NFL Charities for research and consulting work.

61. The NFL denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 61, and respectfully refers the Court to the Viano Deposition in *Heco et al. v. Midstate Dodge LLC, et al.* for a complete statement of its contents.

62. The NFL denies the allegations in Paragraph 62.

63. The NFL denies the allegations in Paragraph 63, except admits that certain individuals associated with the NFL, and many other experts in the field, stated and continue to state that further study of CTE is necessary before it can be said that a causal link between football and CTE exists.

64. The NFL denies the allegations in Paragraph 64.

65. The NFL denies the allegations in Paragraph 65.

66. Except as set forth below, the NFL denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 66, respectfully refers the Court to the newspaper accounts published on September 30, 2009 and to the referenced study for complete statements of their contents, and denies any allegations inconsistent therewith. The NFL admits that it stated that the study was subject to limitations and that it was working towards a better understanding of dementia and other memory disorders as they relate to retired players.

67. The allegations in Paragraph 67 state legal conclusions to which no response is required. To the extent a response is required, the NFL denies the allegations in Paragraph 67.

68. The allegations in Paragraph 68 state legal conclusions to which no response is required. To the extent a response is required, the NFL denies the allegations in Paragraph 68.

69. The NFL denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 69.

70. The NFL denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 70.

71. The NFL denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 71, except admits that DeCarlo was drafted by the Chicago Bears in the sixth round of the 1953 draft, admits that he played for the Pittsburgh Steelers in 1953, admits that he played for the Washington Redskins in 1956 and 1957, and admits that he played football with the Baltimore Colts from 1957 through 1960.

72. The NFL admits the allegations in Paragraph 72.

73. The NFL denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 73.

74. The NFL admits the allegations in Paragraph 74.

75. The NFL denies the allegations in Paragraph 75, and avers that, as stated by Judge Anita Brody in her April 22, 2015 final approval memorandum in the *In re: National Football League Players' Concussion Injury Litigation*, “[t]he study of CTE

is nascent, and the symptoms of the disease, if any, are unknown.” Mem. Op. at 79, *In re: National Football League Players’ Concussion Injury Litigation*, No. 12-md-2323 (E.D. Pa. Apr. 22, 2015), Doc. No. 6509.

76. The NFL denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 76.

77. The NFL denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 77.

78. The NFL denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 78.

79. The NFL denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 79.

80. The NFL denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 80.

81. The NFL denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 81.

82. The NFL denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 82.

83. The NFL denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 83.

84. The NFL denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 84.

85. The NFL repeats and incorporates each of its responses to each paragraph above as though fully set forth herein.

86. The NFL denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 86.

87. The allegations in Paragraph 87 state legal conclusions to which no response is required. To the extent a response is required, the NFL denies the allegations in Paragraph 87.

88. The allegations in Paragraph 88 state legal conclusions to which no response is required. To the extent a response is required, the NFL denies the allegations in Paragraph 88.

89. The allegations in Paragraph 89 state legal conclusions to which no response is required. To the extent a response is required, the NFL denies the allegations in Paragraph 89.

90. The allegations in Paragraph 90 state legal conclusions to which no response is required. To the extent a response is required, the NFL denies the allegations in Paragraph 90.

91. The allegations in Paragraph 91 state legal conclusions to which no response is required. To the extent a response is required, the NFL denies the allegations in Paragraph 91.

92. The allegations in Paragraph 92 state legal conclusions to which no response is required. To the extent a response is required, the NFL denies the allegations in Paragraph 92.

93. The allegations in Paragraph 93 state legal conclusions to which no response is required. To the extent a response is required, the NFL denies the allegations in Paragraph 93.

94. The NFL repeats and incorporates each of its responses to each paragraph above as though fully set forth herein.

95. The NFL denies the allegations in Paragraph 95.

96. The NFL denies the allegations in Paragraph 96.

97. The NFL denies the allegations in Paragraph 97.

98. The allegations in Paragraph 98 state legal conclusions to which no response is required. To the extent a response is required, the NFL denies the allegations in Paragraph 98.

99. The NFL repeats and incorporates each of its responses to each paragraph above as though fully set forth herein.

100. The allegations in Paragraph 100 state legal conclusions to which no response is required. To the extent a response is required, the NFL denies the allegations in Paragraph 100.

101. The allegations in Paragraph 101 state legal conclusions to which no response is required. To the extent a response is required, the NFL denies the allegations in Paragraph 101.

102. The allegations in Paragraph 102 state legal conclusions to which no response is required. To the extent a response is required, the NFL denies the allegations in Paragraph 102.

103. The NFL repeats and incorporates each of its responses to each paragraph above as though fully set forth herein.

104. The allegations in Paragraph 104 state legal conclusions to which no response is required. To the extent a response is required, the NFL denies the allegations in Paragraph 104.

105. The allegations in Paragraph 105 state legal conclusions to which no response is required. To the extent a response is required, the NFL denies the allegations in Paragraph 105, except admits that it required the use of head protectors beginning in 1943, admits that it enacted rules making it illegal for a player (other than the ball carrier) to grab an opponent's face guard in 1956, and admits that it enacted rules making it illegal for any player to grab an opponent's face mask in 1962.

106. The allegations in Paragraph 106 state legal conclusions to which no response is required. To the extent a response is required, the NFL denies the allegations in Paragraph 106.

107. The allegations in Paragraph 107 state legal conclusions to which no response is required. To the extent a response is required, the NFL denies the allegations in Paragraph 107.

108. The allegations in Paragraph 108 state legal conclusions to which no response is required. To the extent a response is required, the NFL denies the allegations in Paragraph 108.

109. The NFL denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 109.

110. The allegations in Paragraph 110 state legal conclusions to which no response is required. To the extent a response is required, the NFL denies the allegations in Paragraph 110.

111. The allegations in Paragraph 111 state legal conclusions to which no response is required. To the extent a response is required, the NFL denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 111.

112. The allegations in Paragraph 112 state legal conclusions to which no response is required. To the extent a response is required, the NFL denies the allegations in Paragraph 112.

113. The allegations in Paragraph 113 state legal conclusions to which no response is required. To the extent a response is required, the NFL denies the allegations in Paragraph 113.

114. The NFL repeats and incorporates each of its responses to each paragraph above as though fully set forth herein.

115. The allegations in Paragraph 115 state legal conclusions to which no response is required. To the extent a response is required, the NFL denies the allegations in Paragraph 115.

116. The allegations in Paragraph 116 state legal conclusions to which no response is required. To the extent a response is required, the NFL denies the allegations in Paragraph 116.

117. The allegations in Paragraph 117 state legal conclusions to which no response is required. To the extent a response is required, the NFL denies the allegations in Paragraph 117.

118. The allegations in Paragraph 118 state legal conclusions to which no response is required. To the extent a response is required, the NFL denies the allegations in Paragraph 118.

119. The NFL repeats and incorporates each of its responses to each paragraph above as though fully set forth herein.

120. The allegations in Paragraph 120 state legal conclusions to which no response is required. To the extent a response is required, the NFL denies the allegations in Paragraph 120.

121. The allegations in Paragraph 121 state legal conclusions to which no response is required. To the extent a response is required, the NFL denies the allegations in Paragraph 121.

122. The allegations in Paragraph 122 state legal conclusions to which no response is required. To the extent a response is required, the NFL denies the allegations in Paragraph 122.

123. The NFL denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 123.

124. The allegations in Paragraph 124 state legal conclusions to which no response is required. To the extent a response is required, the NFL denies the allegations in Paragraph 124.

125. The allegations in Paragraph 125 state legal conclusions to which no response is required. To the extent a response is required, the NFL denies the allegations in Paragraph 125.

126. The allegations in Paragraph 126 state legal conclusions to which no response is required. To the extent a response is required, the NFL denies the allegations in Paragraph 126.

127. The allegations in Paragraph 127 state legal conclusions to which no response is required. To the extent a response is required, the NFL denies the allegations in Paragraph 127.

128. The NFL repeats and incorporates each of its responses to each paragraph above as though fully set forth herein.

129. The allegations in Paragraph 129 state legal conclusions to which no response is required. To the extent a response is required, the NFL denies the allegations in Paragraph 129.

130. The NFL denies the allegations in Paragraph 130, except admits that it funded and supported certain research concerning the relationship, if any, between head impacts in football and brain injury.

131. The allegations in Paragraph 131 state legal conclusions to which no response is required. To the extent a response is required, the NFL denies the allegations in Paragraph 131.

132. The allegations in Paragraph 132 state legal conclusions to which no response is required. To the extent a response is required, the NFL denies the allegations in Paragraph 132.

133. The allegations in Paragraph 133 state legal conclusions to which no response is required. To the extent a response is required, the NFL denies the allegations in Paragraph 133.

134. The allegations in Paragraph 134 state legal conclusions to which no response is required. To the extent a response is required, the NFL denies the allegations in Paragraph 134.

135. The NFL repeats and incorporates each of its responses to each paragraph above as though fully set forth herein.

136. The allegations in Paragraph 136 state legal conclusions to which no response is required. To the extent a response is required, the NFL denies the allegations in Paragraph 136.

137. The allegations in Paragraph 137 state legal conclusions to which no response is required. To the extent a response is required, the NFL denies the allegations in Paragraph 137.

138. The allegations in Paragraph 138 state legal conclusions to which no response is required. To the extent a response is required, the NFL denies the allegations in Paragraph 138.

139. The allegations in Paragraph 139 state legal conclusions to which no response is required. To the extent a response is required, the NFL denies the allegations in Paragraph 139.

140. The allegations in Paragraph 140 state legal conclusions to which no response is required. To the extent a response is required, the NFL denies the allegations in Paragraph 140.

141. The allegations in Paragraph 141 state legal conclusions to which no response is required. To the extent a response is required, the NFL denies the allegations in Paragraph 141.

142. The allegations in Paragraph 142 state legal conclusions to which no response is required. To the extent a response is required, the NFL denies the allegations in Paragraph 142.

143. The NFL repeats and incorporates each of its responses to each paragraph above as though fully set forth herein.

144. The NFL admits that Plaintiff purports to bring his claims pursuant to the Pennsylvania Survival Act, 42 Pa. C.S.A. § 8302, and the Pennsylvania Wrongful Death Act, 42 Pa. C.S.A. § 8301.

145. The NFL denies knowledge or information necessary to form a belief as to the truth of the allegations in Paragraph 145, except admits that Plaintiff, on behalf of DeCarlo's Estate and the next of kin and heirs, purports to seek all damages allowable under the law for his Wrongful Death/Survival Action.

146. The allegations in Paragraph 146 state legal conclusions to which no response is required. To the extent a response is required, the NFL denies the allegations in Paragraph 146.

### **PRAYER FOR RELIEF**

The NFL denies that Plaintiff is entitled to any of the relief requested in his Prayer for Relief.

### **Affirmative Defenses**

Defendant asserts the following affirmative and additional defenses, without the burden of proof for any issues to which applicable law places the burden on Plaintiff. Moreover, nothing stated herein is intended to be construed as an acknowledgement that any particular issue or subject matter is relevant to Plaintiff's allegations. Furthermore, all defenses are pleaded in the alternative, and none constitutes an admission of liability or that Plaintiff is entitled to relief on the claims. Defendant reserves the right to raise additional defenses, affirmative defenses, counterclaims, cross-claims, and third-party claims not asserted herein of which it may become aware through discovery or other investigation, or as otherwise may be appropriate.

#### **First Affirmative Defense**

Some or all of the claims asserted in the Complaint fail to state a claim upon which relief can be granted.

#### **Second Affirmative Defense**

Some or all of the claims asserted in the Complaint are barred by the applicable statute of limitations.

#### **Third Affirmative Defense**

Some or all of the claims asserted in the Complaint are barred by the doctrine of laches.

#### **Fourth Affirmative Defense**

Defendant did not commit any act for which liability to Plaintiff would arise.

**Fifth Affirmative Defense**

Some or all of the claims asserted in the Complaint are barred by the assumption of risk doctrine.

**Sixth Affirmative Defense**

Plaintiff's claims are barred in whole or in part by DeCarlo's contributory negligence.

**Seventh Affirmative Defense**

Some or all of the claims asserted in the Complaint are barred by the statute of frauds.

**Eighth Affirmative Defense**

Plaintiff's claims for damages fail because damages are nonexistent, speculative, remote, not of the nature or to the extent alleged, were not the foreseeable result of Defendant's alleged conduct, and/or are impossible to prove.

**Ninth Affirmative Defense**

To the extent that Plaintiff has incurred any damages, which Defendant denies, such damages were not proximately or legally caused by any act or omission of Defendant or any of its agents.

**Tenth Affirmative Defense**

Plaintiff is not entitled to recover attorneys' fees and costs or other costs and disbursements.

**Eleventh Affirmative Defense**

Plaintiff's claimed injuries and damages were caused, in whole or in part, by the actions or omissions of others for whose conduct Defendant is not responsible.

**Twelfth Affirmative Defense**

The intervening or superseding cause of any injury allegedly sustained by Plaintiff is a result of DeCarlo's conduct.

**Thirteenth Affirmative Defense**

Damages, if any, alleged by Plaintiff were caused, in whole or in part, by the culpable conduct and/or negligence of DeCarlo, and any recovery for such damages must be diminished in the proportion which the culpable conduct and/or negligence attributable to DeCarlo bears to culpable conduct and/or negligence which caused the alleged damages.

**Fourteenth Affirmative Defense**

Plaintiff's recovery is barred, in whole or in part, to the extent that DeCarlo failed to mitigate the alleged injuries or damages.

**Fifteenth Affirmative Defense**

Some or all of the claims asserted in the Complaint are barred by workers' compensation exclusivity.

**Sixteenth Affirmative Defense**

Plaintiff's claims against Defendant are barred, in whole or in part, because Defendant had no duty to verify, opine upon, review, or correct any information that was given to DeCarlo by a third party.

**Seventeenth Affirmative Defense**

Plaintiff's claims are barred, in whole or in part, because the alleged misstatements or omissions are nonactionable expressions of opinion that Plaintiff cannot prove were not truly held at the time they were made.

**Eighteenth Affirmative Defense**

Plaintiff's claim of fraudulent concealment is barred because no fiduciary relationship existed between DeCarlo and Defendant, and Defendant lacked an affirmative duty to disclose information to DeCarlo.

**Nineteenth Affirmative Defense**

The servants, agents and/or employees of Defendant did not take part in, or have knowledge of, or direct the acts complained of in the Complaint and/or the events leading up to the alleged incident.

**Twentieth Affirmative Defense**

Plaintiff's claim for punitive damages violates the due process, equal protection, and Excessive Fines and Penalties provisions of the Fifth, Eighth, and Fourteenth Amendments of the United States Constitution and the correlative provisions of the New York Constitution.

**Twenty-first Affirmative Defense**

Plaintiff is not entitled to punitive damages because Defendant's alleged wrongful conduct was neither "aimed at the public generally," nor sufficiently egregious.

**Twenty-second Affirmative Defense**

Plaintiff's claims of negligent hiring and negligent retention are barred because no employer-employee relationship existed with the MTBI Committee.

**Twenty-third Affirmative Defense**

Some or all of the claims asserted in the Complaint are barred by accord and satisfaction and/or waiver and release.

### Reservation of Rights

Defendant expressly reserves the right to amend and/or supplement this Answer and the Affirmative Defenses. Defendant reserves the right to raise any additional defenses not asserted herein that may be revealed during the course of discovery or other investigation, or that otherwise are found applicable to it.

WHEREFORE, Defendant requests the entry of a judgment in its favor and against Plaintiff dismissing the Complaint with prejudice and denying the relief requested in the Complaint; awarding Defendant the costs and expenses incurred in this litigation, including reasonable attorneys' fees; and awarding Defendant such other and further relief as the Court may deem just and proper.

Dated: New York, New York  
May 19, 2017

Respectfully submitted,

PAUL, WEISS, RIFKIND, WHARTON &  
GARRISON LLP

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